

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

IN RE: NATIONAL COLLEGIATE) Docket No. 16 C 8727
ATHLETIC ASSOCIATION STUDENT-)
ATHLETE CONCUSSION INJURY) Chicago, Illinois
LITIGATION - SINGLE SPORT/) May 30, 2019
SINGLE SCHOOL (FOOTBALL)) 10:00 o'clock a.m.

TRANSCRIPT OF PROCEEDINGS - MOTION
BEFORE THE HONORABLE JOHN Z. LEE

APPEARANCES:

For the Plaintiffs:	EDELSON, PC BY: MR. BENJAMIN H. RICHMAN 350 N. LaSalle St., 14th Floor Chicago, Illinois 60654
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For the Atlantic Coast Conference via teleconference:	FOX ROTHSCHILD, LLP BY: MR. DAVID E. ALBRIGHT 300 North Greene Street Greensboro, North Carolina 27401
For the Institutional Defendants, Lead Counsel:	JONES DAY BY: MR. MATTHEW A. KAIRIS 325 John H. McConnell Blvd. Suite 600 Columbus, Ohio 43215
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1 APPEARANCES (Cont'd):

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4 For Big Ten and
5 Lead Counsel for
6 Conference defendants:

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7 For the NCAA:

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12 For Heartland Athletic
13 Collegiate Conference
14 via teleconference:

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15 Also Present:

MS. TANYA J. POTEET,
Capital University

16 Court Reporter:

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21 PROCEEDINGS RECORDED BY
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1 (Proceedings had in open court, in part via telephone
2 conference:)

3 THE CLERK: 16 CV 8727, NCAA Student Athlete
4 Concussion Injury Litigation.

5 If you can please state your name when you're
6 speaking, for the parties that are on the phone.

7 MS. SPELLMAN: Good morning, your Honor, Johanna
8 Spellman for the NCAA.

9 MR. KAIRIS: Good morning. Matt Kairis,
10 institutional lead counsel.

11 MR. RING: Good morning, your Honor, Dan Ring on
12 behalf of the Big Ten and standing in for Mr. Olsen on behalf
13 of the conferences.

14 MR. RICHMAN: Good morning, your Honor, Ben Richman
15 on behalf of the plaintiffs.

16 MR. WEISS: Sol Weiss on behalf of the plaintiffs.

17 THE COURT: Who do we have on the telephone, please?

18 MR. HEALY: Matt Healy on behalf of a plaintiff.

19 MR. ALBRIGHT: Erik Albright on behalf --

20 MS. MORGAN: Good morning, your Honor, Caitlin Morgan
21 and Leane Capps on behalf of the Big 12 Conference, on the
22 phone.

23 MR. ALBRIGHT: Erik Albright on behalf of the
24 Atlantic Coast Conference, on the phone.

25 THE COURT: Anyone else on the phone?

1 MS. POTEET: Tanya Poteet --

2 MR. HATFIELD: Mark Hatfield, your Honor, Heartland

3 --

4 MS. POTEET: -- from Capital University.

5 THE CLERK: One at a time, please.

6 MR. HATFIELD: Mark Hatfield --

7 MS. POTEET: Tanya --

8 MR. HATFIELD: -- Heartland --

9 I apologize. Go ahead.

10 MS. POTEET: Tanya Poteet, Capital University.

11 MR. HATFIELD: Mark Hatfield, Heartland Athletic
12 Collegiate Conference.

13 MS. MORGAN: And, your Honor, just to clarify,
14 Caitlin Morgan and Leane Capps with Polsinelli. We're
15 appearing on behalf of both the Big 12 and Conference USA.

16 THE COURT: Anyone else on the phone?

17 (No response.)

18 THE COURT: Okay.

19 MR. WHISTON: Your Honor, Greg Whiston on behalf of
20 the defendant Mid-America Intercollegiate Athletics
21 Association.

22 MS. HOUCK: Your Honor, Pearlynn Houck on behalf of
23 the Southeastern Conference.

24 MR. LEWIS: Good morning, your Honor, John Lewis on
25 behalf of a number of institutional defendants.

1 THE COURT: Okay. Good morning, everyone.

2 So, we're here on plaintiffs' motion asking me to, in
3 their words, clarify the scope of the responsibilities of
4 liaison counsel and lead defendants' counsel in this case.

5 So, I read the briefs that were submitted by the
6 various interested parties with regard to the motion, but let
7 me ask the plaintiff this: So, the alternative to going
8 through liaison counsel and lead counsel is, what?

9 MR. RICHMAN: Your Honor, I'm going to answer the
10 question directly, but I would like to add a little context to
11 it.

12 We recently filed some 200 new actions. The
13 alternative would be to serve each one of the defendants in
14 each of those two actions, which we can, of course, do. Our
15 hope was to try and find some level of efficiency, in terms of
16 working through the appointed defendant lead counsel.

17 THE COURT: But you don't plan to serve them
18 personally, right? You intend to send -- serve them via
19 certified mail, asking for waivers of service?

20 MR. RICHMAN: Correct.

21 THE COURT: Okay.

22 MR. RICHMAN: But our hope was that through
23 communication with defense counsel -- which we've had many,
24 and there really haven't been any issues with that -- that we
25 could, again, find some level of efficiency, given -- you

1 know, not speaking technically, but -- that the NCAA is really
2 the body that represents all of these defendants; and, perhaps
3 there's some way we can communicate through lead counsel
4 rather than us speaking with 200 some-odd sets of potentially
5 new counsel.

6 Because, yes, we can put everything in the mail, but
7 then we're likely to get back communications from a number of
8 different counsel for different defendants and institutions.
9 And we're just hoping to, again, create efficiencies. Not
10 make things difficult for anybody, but try and find it where
11 we can in this case.

12 I think we see there's a lot of people represented in
13 the courtroom here just for this motion and the status today.
14 So, we're trying to cut down on that as much as possible.

15 THE COURT: I understand that. And that's, after
16 all, the purpose of MDL proceedings.

17 My concern, though, is that without the consent of
18 each and every one of the named defendants to be represented
19 by either Ms. Spellman or other lead counsel, I would think
20 the plaintiff would be concerned about due process problems if
21 I were to impose such a requirement from the top down.

22 I can't order a particular school or conference to
23 be -- to consent to Ms. Spellman's representation, nor can I
24 order them to consent to jurisdiction.

25 And, so, I understand the plaintiffs' goals in trying

1 to achieve efficiency, and, you know, I think they're
2 commendable; but, I don't know how we get around, you know,
3 that sticky problem of due process.

4 MR. RICHMAN: Your Honor, just to be clear, as we
5 spoke about in the hallway, I understand that it's an up- --
6 it was an uphill battle for us to make that argument here.
7 But what I'm not suggesting right now is that we force any of
8 these defendants to be represented by any of these able
9 counsel. The point is more that they have better insight into
10 who to be communicating with, and perhaps there's ways to
11 create efficiencies in that respect.

12 So, I just wanted to make that clear. We haven't
13 reached an agreement, so I don't know if there's anything your
14 Honor can force them to do at this point. But we wanted to
15 try, obviously.

16 THE COURT: Well, so, for example, what sort of
17 information would be helpful to you in sending out the
18 summonses via certified mail?

19 I'm assuming that you have the addresses of the
20 institutions and the addresses of whatever their General
21 Counsel's office is.

22 MR. RICHMAN: Sure.

23 THE COURT: I guess I'm just trying to understand how
24 they could -- how you envision this working.

25 MR. RICHMAN: I'm envisioning more something where,

1 for example, Ms. Spellman or her co-counsel might be able to,
2 through their client, the NCAA, reach out kind of in an
3 omnibus fashion to the defendants that have been named and are
4 part of their organization and see if there's some way we can
5 get a response about whether people are going to waive
6 service, things of that nature, rather than, like your Honor
7 said, dropping everything in a certified envelope and sending
8 it out several hundred times. That's all. That's really the
9 goal.

10 THE COURT: Ms. Spellman?

11 MS. SPELLMAN: Yes, your Honor.

12 Service of process is not, you know, an
13 administrative matter. It's a due process requirement. And
14 the rules are very clear that plaintiffs must comply with the
15 requirements set forth under Rule 4 to properly serve process
16 and make an entity a party to the litigation and subject to
17 the Court's jurisdiction.

18 I think your Honor is exactly right that plaintiffs
19 have, or have access to, the information that they would need
20 to serve process on these new defendants.

21 Having to serve process is a predictable consequence
22 of naming these new defendants in the new wave of cases. I
23 don't see any justification in plaintiffs' briefing for
24 shifting responsibility for facilitating service of process to
25 the defendants or to liaison counsel or lead counsel. It's an

1 obligation imposed on plaintiffs under the rules.

2 MR. KAIRIS: Your Honor, it may not be as large of a
3 problem as suggested. You know, there's now roughly 400
4 cases; in this new wave, you know, almost -- almost 300 of
5 them. There are no conferences named in the new wave of
6 cases. So, we're talking about either the NCAA -- which is
7 named in every case -- or a number of institutions.
8 Institutions are only named in 96 of those cases.

9 The NCAA, my understanding, has waived service for
10 itself. So, all of those cases that involve the NCAA only,
11 that just whittles it down to 96 cases.

12 And I'll tell you from -- you know, the reaction from
13 hearing about these cases being filed has run the complete
14 gamut. I'm sure there are still schools that have no idea
15 that any of this exists. I've gotten calls from school
16 presidents for small universities that say, we don't have a
17 General Counsel office; we don't even have dedicated outside
18 counsel; I'm not going to devote any resources of this
19 institution to even talking to you or anybody else until I
20 actually have been sued, because maybe this will all just
21 disappear and I'll never get served.

22 So, it's -- you know, it's very difficult --

23 THE COURT: That's wishful thinking.

24 MR. KAIRIS: You know, I certainly don't have a
25 package to deliver with any -- and I don't even know if any --

1 certain of the people that I talked to are actually the
2 registered agents. I would think, you know, if you sue an
3 institution which is a corporation, as they pointed out in
4 their papers, you can find their registered agent and you can
5 drop it in the mail. And that starts a process where those
6 schools either retain counsel or become involved in this MDL,
7 where there's a communication stream between liaison and lead
8 counsel.

9 And from there, I think there are going to be a lot
10 of efficiencies under Rule 5, as far as serving papers and
11 pleadings and the like.

12 But this is just a whole different game because a lot
13 of these people just don't want to pay attention to this until
14 they've been sued according to due process.

15 THE COURT: Okay.

16 Anything anyone else wants to add?

17 MR. RICHMAN: No, your Honor.

18 MR. WEISS: No, your Honor.

19 THE COURT: All right.

20 So, as I said, I understand the impetus behind
21 plaintiffs' motion to try to streamline matters. And I'm all
22 for streamlining matters or trying to streamline matters. It
23 would be one thing if all Ms. Spellman had to do was send out
24 an e-mail to whatever school was sued and say, hey, do you
25 waive service of process? But, invariably, that will elicit

1 questions back to Ms. Spellman which may kick off an
2 attorney-client relationship, that also would put Ms. Spellman
3 in a very difficult spot because she's representing the NCAA
4 and those interests, while mostly aligned, may not be
5 completely aligned either now or later.

6 And, so, I think that while in the broad scheme of
7 things the request seems interesting enough to explore, when
8 you get down to where the rubber meets the road, it just
9 raises a host of other issues that I think would, in the end,
10 end up just delaying things more rather than accomplishing the
11 goals that the plaintiff would like to accomplish and, I know,
12 the parties would like to accomplish, which is trying to do
13 this in an expedited manner.

14 Furthermore, I think it does present some due process
15 issues. These defendants are entitled to be served. And they
16 can waive service, but they have to do so by either a duly
17 authorized representative or their own attorneys, which a lot
18 of them don't really have at this point or may have different
19 attorneys than Ms. Spellman; or, they may perhaps look to
20 Ms. Spellman and other lead counsel for that legal advice,
21 which they can't really provide.

22 And, so, the fact that they're designated as lead
23 counsel -- that's the nomenclature that's often used -- is
24 lead counsel just as a matter of administratively coordinating
25 all of these MDLs for the purpose of litigation. It doesn't

1 mean that I've appointed them as attorneys for anyone who's
2 been sued. And that's what would be required under the due
3 process clause and under Rule 4. And I just don't have the
4 authority to do that.

5 So, again, while the sentiment behind the motion is
6 laudable, the motion is denied.

7 I know that there are three motions to dismiss that
8 remain pending. I know the parties are anxious to get this
9 entire proceeding on the road, which I am, too. Believe me.
10 And, so, I just want to let the parties know that I will be
11 issuing those rulings on the remaining motions to dismiss in
12 the next 30 days. Okay?

13 MR. RICHMAN: Thank you, your Honor.

14 MR. WEISS: Thank you, your Honor.

15 MS. SPELLMAN: Thank you, your Honor.

16 THE COURT: Thank you.

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19 I certify that the foregoing is a correct transcript from the
20 record of proceedings in the above-entitled matter.

21

22 /s/ Joseph Rickhoff
23 Official Court Reporter

June 3, 2019

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